



Ball Corporation

Packaging Products, Americas

9300 West 108th Circle, Broomfield, CO 80021-3682 (303) 460-5530 Fax (303) 460-5238

October 16, 2009

EHS09-L-250
Certified

US EPA, Region 10
Claire Hong, Remedial Project Manager
Environmental Cleanup Office, ECL-III
1200 Sixth Ave, Suite 900
Seattle, WA 98101

Subject: Lower Duwamish 104 (e) Response

Dear Ms. Hong:

Please find attached the 104 (e) response requested in the July 21 letter from Sheila Eckman for the former Ball-InCon/Ball Glass Container Corporation facility at 5801 East Marginal Way South in Seattle. Please contact me at the above address, at kbickell@ball.com or at 303-460-5235 if you require additional information.

Sincerely,

A handwritten signature in black ink that reads "Kent Bickell".

K. S. Bickell
Manager, Environmental, Health & Safety
Ball Corporation

U.S. EPA

CERCLA SECTION 104(e)

INFORMATION REQUEST

Respondent: Representative of Ball Corporation

Site: Lower Duwamish Waterway, Seattle WA

Ball Corporation
5801 East Marginal Way S
Seattle, WA 98134

King County Parcels: 1924049002
1722802315
1924049043

Date: First involvement at the Site to present

Please note: this Information Request includes instructions for responding to this request and definitions of words such as "Respondent," "Site," and "identify" used in the questions.

INFORMATION REQUEST QUESTIONS

1. Respondent Information

- a. Provide the full legal name and mailing address of the Respondent.

Ball Corporation
10 Longs Peak Drive
Broomfield, CO 80021-2510

- b. For each person answering these questions on behalf of Respondent provide:

i. full name; Kent Bickell

ii. title; Manager, Environmental, Health & Safety

iii. business address; 9300 W. 108th Circle, Broomfield, CO 80021-3682

- iv. business telephone number and FAX machine number.

303-460-5235 Fax: 303-460-5238

- b. If Respondent wishes to designate an individual for all future correspondence concerning this Site, please indicate here by providing that individual's name, address, telephone number, and fax number.

Kent Bickell
Manager, Environmental, Health & Safety
9300 W. 108th Circle
Broomfield, CO 80021-3682
303-460-5235 fax: 303-460-5238

- c. State the dates during which Respondent held any property interests at or within one-half mile of the Site.

Ball maintained a property interest at the 5801 East Marginal Way South in Seattle, WA from May 8, 1987 to September 13, 1996.

Beginning on May 8, 1987, Ball was involved in a 50/50 joint venture operation called Ball-InCon Glass Packaging Corporation with TBG Inc., InCon Packaging Inc. and TBE Europe NV.

Ball purchased all the assets of Ball-InCon Glass Packaging Corporation from Hollandsch-Amerikaansche Beleggingsmaatschappij – Holland – American Investment Corporation HAIC on November 30, 1990.

The name was changed from Ball-InCon Glass Packaging Corporation to Ball Glass Container Corporation on June 6, 1994.

The Ball Glass Container Corporation name was changed to Ball-Foster Glass Container Co. L.L.C. on June 26, 1995 when Ball entered into an agreement with Compagnie de Saint Gobain (Saint Gobain). From that date, Ball maintained a 42% interest in Ball-Foster Glass Container Co. L.L.C. until it sold that interest to Saint Gobain on October 7, 1996.

- d. State the dates during which Respondent conducted any business activity at or within one-half mile of the Site.

See response to d.

- e. Describe the nature of Respondent's business activities at the Site or within one-half mile of the Site.

The plant at 5801 Marginal Way South produced glass containers.

- f. In relation to your answer to the previous question, identify all materials used or created by your activities at the Site, including raw materials, commercial products, building debris, and other wastes.

Glass containers for food and beverage use were manufactured at the plant. Glass is made by melting sand, soda ash and various small batch ingredients including colorants. Food grade lubricants were used to swab hot glass molds. Oils were also used to lubricate glass forming machines. Food grade lubricants were sometimes sprayed on formed glass containers. Oils were removed from plant wastewater prior to discharge to the POTW.

- g. If Respondent, its parent corporation, subsidiaries or other related or associated companies have filed for bankruptcy, provide:

Not applicable.

- i. the U.S. Bankruptcy Court in which the petition was filed;
- ii. the docket numbers of such petition;
- iii. the date the bankruptcy petition was filed;
- iv. whether the petition is under Chapter 7 (liquidation), Chapter 11 (reorganization), or other provision; and
- v. a brief description of the current status of the petition.

2. **Site Activities and Interests**

- a. Provide all documents in your possession regarding the ownership or environmental conditions of the Site, including, but not limited to, copies of deeds, sales contracts, leases, blueprints, "as-builts" and photographs. Environmental conditions of the Site includes information related to soil, sediment, water (ground and surface), and air quality, such as, but not limited to:
- i. Any spill, leak, release, or discharge of a hazardous substance, waste, or material at or near the Site;
 - ii. Occurrences of violations, citations, deficiencies, and/or accidents concerning the Site;
 - iii. Remediation or removal of contaminated soils, sediments, or other media at the Site; and

- iv. Investigations, inspections, sampling, and reports generated by Respondent and/or others regarding the Site and surrounding area.

All operating and environmental records which were generated during the period of time Ball had full or partial ownership of the 5801 Marginal Way South facility are or were in the possession of Saint Gobain. Ball has no current employees with personal knowledge of the answers to questions a. i - iv and b. - i of section 2.

Portions of the agreement with Saint Gobain including the indemnity are included as Attachment A.

- b. Provide information on the condition of the Site when purchased or at the beginning of the relevant time period; describe the source, volume, and content of any fill material used during the construction of the buildings, including waterside structures such as seawalls, wharves, docks, or marine ways. Additionally, describe any subsequent improvements, alterations, demolitions, or additions to the physical structures or the Site itself.
- c. Provide information on past dredging or future planned dredging at this Site.
- d. Provide a brief summary of the activities conducted at the Site while under Respondent's ownership or operation. Include process diagrams or flow charts of the industrial activities conducted at the Site.
- e. Provide all documents pertaining to sale, transfer, delivery, disposal, of any hazardous substances, scrap materials, and/or recyclable materials to this property.
- f. Provide all information on electrical equipment used at the Site, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).
- g. Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances which are or were used at the Site for facility operations.
- h. Provide any site drainage descriptions, plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to sanitary sewer.
- i. With respect to past site activities, please provide copies of any stormwater or drainage studies, including data from sampling, conducted at the Site. Also provide copies of any Stormwater Pollution Prevention, Maintenance Plans, Spill Plans, and any stormwater, process water, or any other discharge permits that may have been developed or obtained

for different operations during the Respondent's occupation of the property.

3. Information About Others

a. Describe any business relationship you may have had regarding this property or operations thereon with the following entities:

- i. Air Products and Chemicals, Inc.,
- ii. Hemphill Brothers, Inc.,
- iii. Imperial Limestone Co. Ltd.,
- iv. J.A. Jack & Sons,
- v. J. M. Huber Corporation,
- vi. Lane Mountain Silica Co., and
- vii. Saint Gobain Containers

Ball has no known business relationship with the companies listed in 3. a. i-vi. The Ball relationship to Saint Gobain has been previously disclosed.

b. Provide the names and last known address of any tenants or lessees, the dates of their tenancy and a brief description of the activities they conducted while operating on the above mentioned Site.

Saint Gobain still operates a glass container manufacturing facility at the 5801 Marginal Way South location.

c. If not already provided, identify and provide a last known address or phone number for all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous materials at, or transportation of hazardous materials to or from, the Site.

As stated in the response to 2, Ball has no current employees with personal knowledge concerning environmental issues at the facility.

4. Financial Information

a. Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2004, 2005, 2006, 2007 and 2008. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.

The Ball corporation Federal Tax Identification # is 35-0160610. Federal income tax records for 2004, thru 2008 are over 4000 pages. A synopsis for each year has been prepared was Attachment B which includes a copy of

form 1120 and a list of all forms submitted. Additional specific information can be supplied upon request.

- b. Provide the Respondent's financial interest in, control of, or that the Respondent is a beneficiary of any assets (in the U.S. or in another country) that have not been identified in your federal tax returns or other financial information to be presented to EPA. If there are such assets, please identify each asset by type of asset, estimated value, and location.

A copy of the latest Annual Report and 10K are included as Attachment C and list asset locations, type and value.

- c. If Respondent is, or was at any time, a subsidiary of, otherwise owned or controlled by, or otherwise affiliated with another corporation or entity, then describe the full nature of each such corporate relationship, including but not limited to:

Not applicable.

- i. a general statement of the nature of relationship, indicating whether or not the affiliated entity had, or exercised, any degree of control over the daily operations or decision-making of the Respondent's business operations at the Site;
- ii. the dates such relationship existed;
- iii. the percentage of ownership of Respondent that is held by such other entity(ies);
- iv. for each such affiliated entity provide the names and complete addresses of its parent, subsidiary, and otherwise affiliated entities, as well as the names and addresses of each such affiliated entity's officers, directors, partners, trustees, beneficiaries, and/or shareholders owning more than five percent of that affiliated entity's stock;
- v. provide any and all insurance policies for such affiliated entity(ies) which may possibly cover the liabilities of the Respondent at the Site; and
- vi. provide any and all corporate financial information of such affiliated entities, including but not limited to total revenue or total sales, net income, depreciation, total assets and total current assets, total liabilities and total current liabilities, net working capital (or net current assets), and net worth.

5. **Insurance Coverage**

- a. Provide copies of all property, casualty and/or liability insurance policies, and any other insurance contracts referencing the site or facility and/or Respondent's business operations (including, but not limited to, Comprehensive General Liability, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies). Include, without limitation, all primary, excess, and umbrella policies which could be applicable to costs of environmental investigation and/or cleanup, and include the years such policies were in effect.

Copies of the declaration pages of the Commercial Lines Policy, Commercial general Liability Coverage are included for each year from 1987 to 1997 as Attachment C. Ball did not carry Environmental Improvement Liability, Pollution legal Liability, Cleanup Cost Cap or Stop Loss Policies. The Comprehensive General Liability insurance coverage years all post date the 1984 pollution exclusion so there is no coverage for environmental issues.

- b. If there are any such policies from question "5a" above which existed, but for which copies are not available, identify each such policy by providing as much of the following information as possible:

Not applicable.

- i. the name and address of each insurer and of the insured;
- ii. the type of policy and policy numbers;
- iii. the per occurrence policy limits of each policy; and
- iv. the effective dates for each policy.

- b. Identify all insurance brokers or agents who placed insurance for the Respondent at any time during the period being investigated, as identified at the beginning of this request, and identify the time period during which such broker or agent acted in this regard.

Morrison-Gallagher, Inc., Muncie, Indiana placed the Commercial Union Policies from 1987-1997.

- d. Identify all communication and provide all documents that evidence, refer, or relate to claims made by or on behalf of the Respondent under any insurance policy in connection with the site. Include any responses from the insurer with respect to any claims.

No claims have been tendered.

- e. Identify any previous settlements with any insurer in connection with the site, or for any claims for environmental liabilities during the time period under investigation. Include any policies surrendered or cancelled by the Respondent or insurer.

There are no previous settlements concerning this site. No policies relating to this site have been cancelled or surrendered.

- f. Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.

Evidence of insurance held during the 1987-1997 period has supplied in Attachment D. Accounting files from the 1987-1997 period have been destroyed as they are beyond the 3 year record retention date.

- g. Identify Respondent's policy with respect to document retention.

Insurance policies are not destroyed. Waste disposal records and site soil and ground water investigation records are now retained indefinitely. All environmental records for the Seattle facility are in the possession of Saint Gobain.

6. Compliance with This Request

- a. Describe all sources reviewed or consulted in responding to this request, including, but not limited to:

- i. the name and current job title of all individuals consulted;

Harold Lykins – Director, Corporate Risk,
Kent Bickell, Manager, EH&S

- ii. the location where all documents reviewed are currently kept.

The Saint Gobain Agreement, Federal Income Tax Returns, 2008 Ball Corporation Annual Report, 2008 10K, and Insurance records are kept at 10 Longs Peak Dr., Broomfield CO 80021-2510

i.

INSTRUCTIONS

1. Answer Each Question Completely. Provide a separate answer to each question and subpart set forth in this Information Request. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Information Request and may subject the Respondent to the penalties set out in the cover letter.
2. Response Format and Copies. Provide the responses to this Information Request and at least one copy of all requested documents either electronically or on paper (hard copy). Your submission, whether electronic or hard copy, must include an index that lists all the responsive documents provided, and that indicates where each document is referenced in the written response, and to which question or questions each document is responsive. Additionally, please clearly identify and segregate any information you determine to be Confidential Business Information (CBI).

If providing your response electronically, it must be submitted on a compact disc in Portable Document Format (PDF) and comply with the following requirements:

- a. CBI and personal privacy information should be provided on separate media (e.g., a separate CD) and marked as such to ensure information is appropriately handled and physically separated from the other response information in EPA's files.
 - b. The declaration must be provided in hard copy with an original signature.
 - c. All documents originally smaller than 11 by 17 inches can be submitted electronically; any documents originally larger than 11 by 17 inches must be submitted in hard copy.
 - d. Electronic PDF files cannot be submitted in Adobe Acrobat versions above 6 (or above PDF format version 1.5 if not using Adobe).
 - e. Electronic PDF files must be text-searchable.
 - f. The document index must clearly identify any single electronic document which has been separated into multiple electronic files (because of size limitation or otherwise) and each component file that comprises the full document.
3. Number Each Answer. Number each answer with the number of the question to which it corresponds.
 4. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. Seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered noncompliance with this Information Request.

5. Identify Information Sources. For each question, identify all persons and documents relied upon for the answer.
6. Confidential Information. The information requested herein must be provided even though the Respondent may contend that it includes confidential information or trade secrets. The Respondent may assert a confidentiality claim covering part or all of the information requested, pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b). All information claimed to be confidential should be contained on separate sheet(s) and should be clearly identified as "trade secret" or "proprietary" or "company confidential." A confidentiality claim should be supported by the submission of information consistent with 40 C.F.R. Part 2. Information covered by a confidentiality claim will be disclosed by EPA only to the extent, and only by means of the procedures, provided in 40 C.F.R. §§ 2.201-2.311. **If no such claim accompanies the information received by EPA, it may be made available to the public by EPA without further notice.**
7. Disclosure to EPA Contractor. Information submitted in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. § 2.310(h), even if the Respondent asserts that all or part of it is confidential business information. EPA may provide this information to its contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Information Request. If submitting information and asserting it is entitled to treatment as confidential business information, the Respondent may comment on EPA's intended disclosure within 14 days of receiving this Information Request.
8. Personal Privacy Information. Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from responses, included on separate sheet(s), and marked as "Personal Privacy Information". Note, however, that unless prohibited by law, EPA may disclose this information to the general public without further notice.
9. Objections. The Respondent must provide responsive information notwithstanding objections to certain questions. To object without providing responsive information may subject Respondent to the penalties set out in the cover letter.
10. Privilege. If a privilege is asserted for any document responsive to this Information Request, identify (see Definitions) the document and provide the basis for assertion. If a privilege exists for only a portion of a document, provide the portion of the document that is not asserted be privileged, identify the portion that is asserted to be privileged, and provide the basis for asserting privilege. **Please note that regardless of the assertion of any privilege, any facts contained in the document which are responsive to the Information Request must be disclosed in your response.**
11. Declaration. The Respondent must complete the enclosed declaration, certifying the accuracy of all statements in your response.

DEFINITIONS

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601, *et seq.*, or Volume 40 of the Code of Federal Regulations (CFR), in which case such statutory or regulatory definitions shall apply.

The following definitions shall apply to the following words as they appear in this Enclosure:

1. The term "Respondent" shall mean the addressee of this Request, together with the addressee's agents, employees, and contractors.
2. The terms "document" and "documents" shall mean any method of recording, storing, or transmitting information. "Document" shall include, but not be limited to:
 - a. writings of any kind, including, but not limited to, any of the following:
 - i. letters, memoranda, fax transmittals;
 - ii. meeting minutes, telephone records, notebooks;
 - iii. agreements and contracts;
 - iv. reports to shareholders, management, or government agencies;
 - v. transportation manifests;
 - vi. copies of any document.
 - b. any film, photograph, or sound recording on any type of device;
 - c. any blueprints or drawings;
 - d. attachments to, or enclosures with, any document.
3. The term "identify" means, with respect to a natural person, to set forth: (a) the person's full name, (b) present or last known business and home addresses and telephone numbers; and (c) present or last known employer (include full name and address) with job title, position, or business.

4. The term "identify" means, with respect to a corporation, partnership, business trust, or other entity, to set forth: (a) its full name; (b) complete street address; (c) legal form (e.g., corporation, partnership, etc.); (d) the state under whose laws the entity was organized; and (e) a brief description of its business.
5. The term "identify" means, with respect to a document, to provide: (a) its customary business description (e.g., letter, invoice); (b) its date; (c) its number if any (e.g., invoice or purchase order number); (d) the identity of the author, addressee, and/or recipient; and (e) a summary of the substance or the subject matter. **Alternatively**, Respondent may provide a complete copy of the document.
6. The term "material" or "materials" shall mean any and all raw materials, commercial products, wastes, chemicals, substances, or matter of any kind.
7. The "period being investigated" and "the relevant time period" shall mean the date of Respondent's first involvement at the Site to present.
8. The term "property" shall mean any interest in real or personal property whatsoever, including fee interests, leases, licenses, rental, and mineral rights.
9. The "Site" shall mean any or all property or area described as or near 5801 East Marginal Way S; and King County Tax Parcels: 1924049002, 1722802315, and 1924049043.
10. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, hazardous waste, hazardous substances, and pollutants or contaminants, whether solid, liquid, or sludge, including, but not limited to, building debris and asbestos-containing material.
11. The term "business activities" shall mean all actions, endeavors, ventures, or financing arrangements related in any manner whatsoever to the use and development of the Site, including surveying, sampling, grading, documentation, photography, demolition, construction, and waste disposal, and sales.

DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent and that the foregoing is complete, true, and correct.

Executed on October 16, 2009.

Kent Bickell

Signature

Kent Bickell

Type or Print Name

Mgr - E. H. & S.

Title

Mailing Address:

Kent Bickell
Manager, Environmental Health & Safety
Ball Corporation
Packaging Products, Americas
9300 West 108th Circle
Broomfield, CO 80021-3682

Attachment A

A portion of the Purchase Agreement by Ball-Foster Glass Container Co. L.L.C. of the assets of Ball Glass Container Company.

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"Closing Net Fixed Assets" means property, plant, equipment and other fixed assets at cost, less accumulated depreciation, in each case as reflected on the Closing Balance Sheet; provided that none of such property, plant and equipment or other fixed assets shall have been re-valued since the Balance Sheet Date.

"Closing Trade Working Capital" means current assets less current liabilities, in each case as reflected on the Closing Balance Sheet, except as modified by Annex III.

"Confidentiality Agreements" means (i) the Confidentiality Agreement between Ball and Saint-Gobain Emballage dated October 21, 1994, as amended as of November 9, 1994 and (ii) the Confidentiality Agreement between Lehman Brothers, Inc. (as financial advisor to, and on behalf of, Seller and Ball) and Compagnie de Saint-Gobain dated March 14, 1995, as amended as of such date.

"Environmental Laws" means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and governmental restrictions, whether now or hereafter in effect, relating to the environment, the effect of the environment on human health or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic, radioactive or hazardous substances or wastes into the environment, including without limitation ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic, radioactive or hazardous substances or wastes or the clean-up or other remediation thereof.

"Environmental Liabilities" means any and all liabilities of or relating to Seller (including any entity which is, in whole or in part, a predecessor of Seller), whether vested or unvested, contingent or fixed, actual or potential, known or unknown, other than Excluded Environmental Liabilities, which (i) arise under or relate to matters covered by Environmental Laws including without limitation any matters disclosed or required to be disclosed in Schedule 3.23 hereto and (ii) relate to actions occurring or conditions existing on or prior to the Closing Date.

"Environmental Permits" means all permits, licenses, authorizations, certificates and approvals of governmental authorities relating to or required by Environmental Laws and necessary or proper for the Business as currently conducted.

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"Excluded Environmental Liabilities" means any and all liabilities of or relating to Seller (including any entity which is, in whole or in part, a predecessor of Seller), whether vested or unvested, contingent or fixed, actual or potential, known or unknown, which (i) arise in connection with or are in any way related to: (x) any off-site Environmental Liabilities of the Business, the Assets or the Real Property (including without limitation off-site disposal); (y) any liabilities related to the clean-up, remediation or investigation of the soil and groundwater contamination at the Carteret facility in New Jersey; and (z) any liability related to the clean-up, remediation or investigation of soil and groundwater contamination at the El Monte facility in California, and (ii) relate to actions occurring or conditions existing on or prior to the Closing Date.

"Final Net Fixed Assets" means Closing Net Fixed Assets (i) as shown in Seller's calculation delivered pursuant to Section 2.8(a), if no notice of disagreement with respect thereto is delivered pursuant to Section 2.8(b) or (ii) if such a notice of disagreement is delivered, (A) as agreed by the parties pursuant to Section 2.8(c) or (B) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 2.8(c); provided that Final Net Fixed Assets shall not in any event be more than Seller's calculation of Closing Net Fixed Assets delivered pursuant to Section 2.8(a) nor less than Buyer's calculation of Closing Net Fixed Assets delivered pursuant to Section 2.8(b).

"Final Trade Working Capital" means Closing Trade Working Capital (i) as shown in Seller's calculation delivered pursuant to Section 2.8(a) if no notice of disagreement with respect thereto is delivered pursuant to Section 2.8(b) or (ii) if such a notice of disagreement is delivered, (A) as agreed by the parties pursuant to Section 2.8(c) or (B) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 2.8(c); provided that Final Trade Working Capital shall not in any event be more than Seller's calculation of Closing Trade Working Capital delivered pursuant to Section 2.8(a) nor less than Buyer's calculation of Closing Trade Working Capital delivered pursuant to Section 2.8(b).

"GAAP" means United States generally accepted accounting principles as in effect from time to time, consistently applied.

"Hazardous Substances" means any toxic, radioactive, corrosive or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics, regulated under Environmental Laws.

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"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Intellectual Property Right" means any trademark, service mark, trade name, service name, invention, patent, trade secret, know-how, copyright, (including any registration or applications for registration of any of the foregoing) or any other similar type of proprietary intellectual property right, in each case which is owned or licensed by Seller or any Affiliate of Seller and used or held for use primarily in the Business.

"Lien" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset. For purposes of this Agreement, a Person shall be deemed to own subject to a Lien any property or asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

"LLC Agreement" means the Limited Liability Company Agreement of Buyer.

"Madera" means the Madera Glass Company, a California corporation.

"Madera Balance Sheet" means the audited balance sheet of Madera as of December 31, 1994, together with the notes thereto.

"Madera Base Net Fixed Assets" means \$19,835,000, which amount represents property, plant, equipment and other fixed assets at cost, less accumulated depreciation of Madera, in each case as of December 31, 1994.

"Madera Base Trade Working Capital" shall be calculated by the parties to their reasonable satisfaction in accordance with Annex III.

"Madera Closing Balance Sheet" means an audited balance sheet of Madera as of the close of business on the Closing Date, together with the notes thereto.

"Madera Closing Net Fixed Assets" means property, plant, equipment and other fixed assets at cost, less accumulated depreciation of Madera, in each case as reflected on the Madera Closing Balance Sheet; provided that none of such property, plant and equipment or other fixed assets shall have been re-valued since the Madera Balance Sheet Date.

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"Madera Closing Trade Working Capital" means current assets, less current liabilities, in each case as reflected on the Madera Closing Balance Sheet, except as modified by Annex III.

"Madera Final Net Fixed Assets" means Madera Closing Net Fixed Assets (i) as shown in Seller's calculation delivered pursuant to Section 2.8(a) if no notice of disagreement with respect thereto is delivered pursuant to Section 2.8(b) or (ii) if such a notice of disagreement is delivered, (A) as agreed by the parties pursuant to Section 2.8(c) or (B) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 2.8(c); provided that Madera Final Net Fixed Assets shall not in any event be more than Seller's calculation of Madera Closing Net Fixed Assets delivered pursuant to Section 2.8(a) nor less than Buyer's calculation of Madera Closing Net Fixed Assets delivered pursuant to Section 2.8(b).

"Madera Final Trade Working Capital" means Madera Closing Trade Working Capital (i) as shown in Seller's calculation delivered pursuant to Section 2.8(a) if no notice of disagreement is delivered pursuant to Section 2.8(b) or (ii) if such a notice of disagreement is delivered, (A) as agreed by the parties pursuant to Section 2.8(c) or (B) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 2.8(c); provided that Madera Final Trade Working Capital shall not in any event be more than Seller's calculation of Madera Closing Trade Working Capital delivered pursuant to Section 2.8(a) nor less than Buyer's calculation of Madera Closing Trade Working Capital delivered pursuant to Section 2.8(b).

"Material Adverse Effect" means a material adverse effect on the business, assets, condition (financial or otherwise) or result of operations of the Business taken as a whole.

"1934 Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Net Financial Indebtedness" means, as of any date with respect to any Person, all financial indebtedness (including capitalized lease obligations) of such Person outstanding on such date, minus cash and cash equivalents of such Person on such date.

"Noncompetition and Cash Settlement Agreement" means the Agreement in substantially the form attached as Exhibit B hereto.

"Person" means an individual, corporation, partnership, association, trust, limited liability company or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

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"Reference Balance Sheet" means the balance sheet attached hereto as Annex I.

"Reference Madera Balance Sheet" means the balance sheet attached hereto as Annex II.

"Regulated Activity" means any generation, treatment, storage, recycling, transportation or Release of any Hazardous Substance.

"Release" means any discharge, emission or release, including a Release as defined in CERCLA at 42 U.S.C. § 9601(22). The term "Released" has a corresponding meaning.

"SGC" means Saint-Gobain Corporation.

"Subsidiary" means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are directly or indirectly owned by such Person.

"Technology Licensing Agreements" means one or more license agreements, in form and substance satisfactory to the parties, to be entered into between Buyer and Seller or its Affiliates.

"Transition Services Agreement" means the Transition Services Agreement, in form and substance satisfactory to the parties, to be entered into between Buyer and Seller or its Affiliates.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Allocation	2.6
Apportioned Obligations	7.3
Assets	2.1
Assumed Liabilities	2.3
Business	recitals
Business Employees	8.4
Closing	2.7
Code	7.1
Contracts	2.1
Defined Contributions Plan	8.9
ERISA	8.1

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ERISA Affiliate	8.1
Excluded Assets	2.2
Excluded Liabilities	2.4
Hourly Employees	8.4
Indemnified Party	10.3
Indemnifying Party	10.3
Loss	10.2
Madera Property	3.9
Madera Securities	3.10
Madera Shares	3.10
Multiemployer Plan	8.1
National Priorities List	3.23
New Defined Contribution Plan	8.9
Permits	3.16
Permitted Liens	3.9
Petty Cash	2.1
Plans	8.1
Post-Closing Tax Period	7.3
Pre-Closing Tax Period	7.1
Principal Properties	3.9
Purchase Price	2.6
Real Property	3.9
Required Consent	3.5
Salaried Employees	8.4
Seller's Pension Plans	8.7
Tax	7.1
Transferred Business Employees	8.4
Transferred Hourly Employees	8.4
Transferred Salaried Employees	8.4
WARN Act	6.5

ARTICLE 2

PURCHASE AND SALE

SECTION 2.1 Purchase and Sale. Except as otherwise provided below, upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase from Seller and Seller agrees, and Ball agrees to cause Seller, to sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, to Buyer at Closing, all of Seller's right, title and interest in, to and under the assets, properties and business, of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, owned, held or used primarily in the conduct of the Business by Seller

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as the same shall exist on the Closing Date, including all assets shown on the Balance Sheet and not disposed of in the ordinary course of business, and all assets of the Business thereafter acquired by Seller other than the Excluded Assets (the "Assets"), including without limitation all right, title and interest of Seller in, to and under:

(a) all owned real property and leases of, and other interests in, real property used or held for use in the conduct of the Business, in each case together with all buildings, fixtures and improvements erected thereon and all easements, rights and interests appurtenant thereto, including without limitation the items listed on Schedule 3.9(a);

(b) all personal property and interests therein, including machinery, equipment, furniture, office equipment, communications equipment, vehicles, rolling stocks, storage tanks, spare and replacement parts, fuel and other tangible property, including without limitation the manufacturing equipment located at the facilities in Asheville, North Carolina and Okmulgee, Oklahoma identified pursuant to Section 2.2(c) and the items listed on Schedule 3.9(b);

(c) all raw materials, work-in-process, merchandise, finished goods, supplies and other inventories;

(d) all rights under all contracts, agreements, leases, subleases, commitments, sales and purchase orders and other instruments, including without limitation the items listed on Schedule 3.15 (collectively, the "Contracts");

(e) all of the outstanding shares of capital stock of, or other ownership interests in (including without limitation any options or other rights to acquire any shares of capital stock, voting securities or other ownership interests in, or any securities convertible into or exchangeable for any shares of capital stock, voting securities or other ownership interests in) any Person which are owned by Seller or any of its Affiliates with respect to the Business, including without limitation the Madera Shares but excluding the shares of capital stock of the Ball Members;

(f) all accounts, notes and other receivables of Seller relating to the Business existing on the Closing Date, other than any accounts, notes and other receivables to be paid to Seller from Ball or any Affiliate of Ball;

(g) all petty cash located at operating facilities of the Business ("Petty Cash");

(h) all of Seller's rights, claims, credits, causes of action or rights of set-off against third parties relating to the Assets, including without limitation unliquidated rights under manufacturers' and vendors warranties;

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(i) all Intellectual Property Rights, processes, proprietary data, formulae, research and development data, computer software programs and other intangible property and any applications for the same, in each case owned or licensed by Seller or any of its Affiliates and used or held or held for use primarily in the Business, including without limitation the items listed on Schedule 3.19 (but excluding those trademarks and tradenames incorporating the "Ball" name and related logos, except to the extent otherwise agreed by the parties pursuant to Section 5.3);

(j) all transferable licenses, permits or other governmental authorizations affecting, or relating to, the Business, including without limitation the items listed on Schedule 3.16 and Schedule 3.23;

(k) all books, records, files and papers, whether in hard copy or computer format, used primarily in the Business, including without limitation engineering information, sales and promotional literature, manuals and data, sales and purchase correspondence, lists of present and former suppliers, lists of present and former customers, shipping records, invoices, personnel and employment records, and any information relating to Taxes imposed on the Assets; and

(l) all goodwill associated with the Business or the Assets, together with the right to represent to third parties that Buyer is the successor to the Business.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, ALL WARRANTIES (WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED) IN REGARD TO MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, CONDITION, DESIGN, OPERATION, MAINTENANCE, VALUE OR OTHERWISE WITH RESPECT TO THE ASSETS ARE EXPRESSLY EXCLUDED.

SECTION 2.2 Excluded Assets. (a) Buyer expressly understands and agrees that the following assets and properties of Seller (the "Excluded Assets") shall be excluded from the Assets and shall be retained by Seller:

(i) all of Seller's cash and cash equivalents on hand and in banks except for Petty Cash;

(ii) insurance policies;

(iii) land, buildings, structures, fixtures and improvements thereon in Asheville, North Carolina and Okmulgee, Oklahoma; provided that Buyer may provide written notice within 45 days or, in the case of Asheville, 15 days, after the date of this Agreement identifying the items of manufacturing equipment in the Asheville and Okmulgee buildings and

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structures that Buyer wishes to acquire and such equipment shall be part of the Assets and not part of the Excluded Assets and the net book value of such equipment shall be included in Final Net Fixed Assets; and provided further that Buyer shall pay all costs associated with the removal of such equipment;

(iv) any Assets sold or otherwise disposed of in the ordinary course of business and not in violation of any provisions of this Agreement during the period from the date hereof until the Closing Date;

(v) any books and records relating primarily to the Excluded Assets or Excluded Liabilities;

(vi) the real property consisting of the facility located at 1509 South Macadonia Avenue, Muncie, Indiana and consisting of building nos. 09, 21, 22, 23, 24 and 25 referred to on Exhibit 1 to Schedule 3.9(a);

(vii) refunds of income, property and similar Taxes relating to Pre-Closing Tax Periods;

(viii) the assets of Seller's Pension Plans; and

(ix) the capital stock of the Ball Members.

(b) Notwithstanding anything herein to the contrary, and for purposes of clarification, the parties hereto agree that the assets set forth on Schedule 2.2(b), which assets are not owned by Seller, shall not constitute part of the Assets.

SECTION 2.3 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, Buyer agrees, effective at the time of Closing, to assume and shall thereafter pay, perform and discharge all liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, of Seller as of the Closing Date primarily arising out of or relating to the Business, except for the Excluded Liabilities (the "Assumed Liabilities"), including without limitation the liabilities reflected on the Closing Balance Sheet.

SECTION 2.4 Excluded Liabilities. The following liabilities and obligations shall be retained by and remain obligations and liabilities of Seller (all such liabilities and obligations not being assumed being herein referred to as the "Excluded Liabilities"), and, notwithstanding anything to the contrary in this Article 2, none of the following shall be Assumed Liabilities for the purpose of this Agreement:

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(a) any obligation or liability for any income, property, and similar Taxes arising from or with respect to (i) the Assets or the operations of the Business which is incurred in or attributable to a Pre-Closing Tax Period, except any obligation or liability for Tax arising from or with respect to the assets or operation of Madera or (ii) Seller or any of its Affiliates (other than Madera), including without limitation any Taxes arising from or in connection with any of the transactions contemplated by this Agreement or any of the Ancillary Agreements;

(b) any obligation or liability (i) arising in connection with or attributable to Seller Pension Plans or (ii) with respect to any Business Employee that is retained by Seller pursuant to Section 8.5 hereof;

(c) any Excluded Environmental Liability;

(d) any obligation or liability identified as an excluded liability on Schedule 2.4;

(e) any obligation or liability of Seller arising in connection with or attributable to a violation of any applicable antitrust law occurring in or attributable to any period prior to the Closing Date; and

(f) any obligation or liability relating to an Excluded Asset.

SECTION 2.5 Assignment of Contracts and Rights. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Asset or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the consent of a third party, would constitute a breach or other contravention thereof or in any way adversely affect the rights of Buyer or Seller thereunder. Seller will use its reasonable best efforts (but without any payment of money by Seller or Buyer) to obtain the consent of the other parties to any such Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Buyer as Buyer may request and Buyer shall cooperate with Seller to obtain Seller's release thereunder (but without the payment of money by Buyer or Seller). If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of Seller thereunder so that Buyer would not in fact receive all such rights or Seller would not be released of its obligations thereunder, Seller and Buyer will cooperate in a mutually agreeable arrangement under which Buyer would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including sub-contracting, sub-licensing, or sub-leasing to Buyer, or under which Seller would enforce for the benefit of Buyer, with Buyer assuming Seller's obligations, any and all rights of Seller against a third party. Seller will promptly pay to Buyer when received all monies received by Seller with respect to any Asset or any claim or

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ARTICLE 10

SURVIVAL; INDEMNIFICATION

SECTION 10.1 Survival. The representations and warranties of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing until the second anniversary of the Closing Date or (i) in the case of the representations and warranties contained in Article 7, until expiration of the applicable statutory period of limitations (giving effect to any waiver, mitigation or extension thereof), (ii) in the case of Section 3.23, until the eighth anniversary of the Closing Date and (iii) in the case of Section 3.12, indefinitely. The covenants and agreements to be performed hereunder (including without limitation those set forth in Article 2) shall remain in full force and effect in accordance with their terms (or, if no survival period is specified, indefinitely); provided that the indemnification obligation of Seller and Ball pursuant to Section 10.2(a)(iv) shall survive the Closing until the eighth anniversary of the Closing Date. Notwithstanding the preceding two sentences, any representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy thereof giving rise to such right to indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

SECTION 10.2 Indemnification. (a) Seller and Ball, on a joint and several basis, hereby indemnify Buyer and its Affiliates against and agree to hold each of them harmless from any and all damage, loss, liability and expense (including without limitation reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding, including any expenses incurred in connection with the enforcement of rights of any party pursuant to this Agreement) (collectively, "Loss") incurred or suffered by Buyer or any of its Affiliates arising out of:

(i) any misrepresentation or breach of warranty made by Seller or Ball pursuant to this Agreement, disregarding all qualifications and exceptions contained therein relating to knowledge (except as used in Section 3.14), materiality or Material Adverse Effect;

(ii) any breach of any covenant or agreement to be performed by Seller or Ball pursuant to this Agreement;

(iii) the failure of Seller or Ball to perform their obligations with respect to any Excluded Liability; and

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(iv) any Environmental Liabilities;

provided that Seller and Ball shall not be liable (i) under this Section 10.2(a) with respect to any individual item of Loss, unless such item exceeds \$50,000 and (ii) under Section 10.2(a)(i) (other than in connection with a misrepresentation or breach of Section 7.2) or 10.2(a)(iv) unless the aggregate amount of Loss with respect to all matters referred to in Section 10.2(a)(i) or 10.2(a)(iv) exceeds \$3,000,000 and then only the extent of such excess. Buyer and its Affiliates shall not be entitled to indemnification pursuant to this Section 10.2(a) with respect to any Loss to the extent that such Loss has been reimbursed pursuant to Section 2.9. Buyer and its Affiliates shall not be entitled to indemnification pursuant to Section 10.2(a)(iv) with respect to any Loss to the extent that Buyer and its Affiliates have been indemnified for such Loss pursuant to Section 10.2(a)(i).

(b) Buyer hereby indemnifies Seller, Ball and their respective Affiliates against and agrees to hold each of them harmless from any and all Loss incurred or suffered by Seller, Ball or any of such Affiliates arising out of:

(i) any misrepresentation or breach of warranty made by Buyer pursuant to this Agreement, disregarding all qualifications and exceptions contained therein relating to knowledge, materiality or Material Adverse Effect;

(ii) any breach of covenant or agreement to be performed by Buyer pursuant to this Agreement;

(iii) the failure of Buyer to perform its obligations with respect to any Assumed Liability; and

(iv) the conduct of the Business by Buyer following the Closing;

provided that Buyer shall not be liable (i) under this Section 10.2(b) with respect to any individual item of Loss, unless such item exceeds \$50,000 and (ii) under Section 10.2(b)(i) unless the aggregate amount of Loss with respect to all matters referred to in Section 10.2(b)(i) exceeds \$3,000,000 and then only the extent of such excess.

SECTION 10.3 Procedures; Exclusivity. (a) The party seeking indemnification under Section 10.2 (the "Indemnified Party") shall give prompt written notice to the party against whom indemnity is sought (the "Indemnifying Party") of any claim, assertion, event or proceeding of which such Indemnified Party has knowledge concerning any Loss as to which such Indemnified Party may request indemnification under such Section or any Loss as to which the

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\$3,000,000 amount referred to in the provisos to Sections 10.2(a) and 10.2(b) may be applied; provided that the failure to give such notice shall not relieve the Indemnifying Party from any liability under Section 10.2, except to the extent that the Indemnifying Party has been prejudiced by such failure. With respect to any such claim or proceeding by or in respect of a third party, the Indemnifying Party shall have the right to direct, through counsel of its own choosing, reasonably satisfactory to the Indemnified Party, the defense or settlement thereof at its own expense. If the Indemnifying Party elects to assume the defense of any such claim or proceeding, the Indemnifying Party thereby waives, except to the extent such right is expressly reserved by the Indemnifying Party, its right to contest its obligation to indemnify the Indemnified Party pursuant to this Section with respect to such claim or proceeding and the Indemnified Party may participate in such defense, but in such case the expenses of the Indemnified Party shall be paid by the Indemnified Party; provided that the fees and expenses of such Indemnified Party's counsel shall be borne by the Indemnifying Party if representation of both parties would be inappropriate due to actual or potential differing interests between them. The Indemnified Party shall provide the Indemnifying Party with reasonable access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise cooperate with the Indemnifying Party in the defense or settlement thereof, and the Indemnifying Party shall reimburse the Indemnified Party for all of its reasonable out-of-pocket expenses in connection therewith. Upon assumption of the defense of any such claim or proceeding by the Indemnifying Party, the Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability for so long as the Indemnifying Party is diligently defending such claim or demand and has posted any required appeal bonds in connection therewith, unless the Indemnifying Party consents in writing to such payment or unless a final judgment from which no appeal may be taken by or on behalf of the Indemnifying Party is entered against the Indemnified Party for such liability. No such third party claim may be settled by the Indemnified Party without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld. Any such settlement shall include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release of the Indemnified Party from all liability in respect of such claim. If the Indemnifying Party shall fail to promptly defend or fail to promptly prosecute or withdraws from such defense, the Indemnified Party shall have the right to undertake the defense or settlement thereof, at the Indemnifying Party's expense. If the Indemnified Party assumes the defense of any such claim or proceeding pursuant to this Section and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego any appeal with respect thereto, then the Indemnified Party shall give the Indemnifying Party prompt written notice thereof and the Indemnifying Party shall have the right to participate in the settlement or assume or reassume the defense of such claim or proceeding. Payments pursuant to Section 10.2 shall be limited to the amount of any liability or damage that remains after deducting therefrom any net Tax benefit

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to the Indemnified Party arising from the insurance proceeds and any incidence or payment of the liability or damage and any indemnity, contribution or other similar payment recovered by the Indemnified Party from any third party with respect thereto. A Tax benefit will be considered to be recognized by the Indemnified Party for purposes of this Section if the Indemnified Party is entitled to a current deduction (for Tax purposes) with respect to an item arising from the incidence or payment of the liability or damage and shall be deemed to be recognized in the tax period in which the indemnity payment occurs, and the amount of the Tax benefit shall be determined by applying the then applicable effective tax rate of the Indemnified Party after any deductions or other allowances reportable with respect to a payment hereunder.

(b) After the Closing, Section 10.2 will provide the exclusive remedy for any claim relating to the subject matter of this Agreement (other than any claim for fraud), except as otherwise provided in Section 12.9.

ARTICLE 11

TERMINATION

SECTION 11.1 Grounds for Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement of Seller and Buyer;
- (b) by either Seller or Buyer if the Closing shall not have been consummated on or before December 31, 1995;
- (c) by either Seller or Buyer if there shall be any law or regulation that makes the consummation of the transactions contemplated hereby illegal or otherwise prohibited or if consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of any court or governmental body having competent jurisdiction; or
- (d) by either Seller or Buyer if the ANC Asset Purchase Agreement is terminated.

The party desiring to terminate this Agreement pursuant to clauses (b) or (c) shall give notice of such termination to the other parties.

SECTION 11.2 Effect of Termination. If this Agreement is terminated as permitted by Section 11.1, such termination shall be without liability of any party (or any stockholder, director, officer, employee, agent, member,

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Schedule 2.4

EXCLUDED LIABILITIES

Working Capital Items

Current portion of long-term debt

Inter- and intracompany liabilities

Current accruals for pensions, retiree medical and life insurance and long term disability

Reserves related to closed facilities

Property taxes in respect of pre-closing periods

Accrued interest

Income taxes currently payable or receivable and deferred income taxes (current and non-current assets and liabilities)

Non-current Items

Long-term debt

Deferred incentive compensation accrued at December 31, 1994 (but not the current year incentive compensation accrual)

Retiree medical and life insurance obligations in respect of employees retired as of the closing date

Defined benefit pension plan obligations and related investment assets

Obligations with respect to employees on long-term disability as of the closing date

Note: Property taxes of the Ex-Madera business will be pro-rated as between pre- and post-closing periods, including any post-closing assessments or refunds. For purposes of the Reference Balance Sheet, it has been assumed that the accrued property tax liability relates entirely to pre-closing periods.

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The excluded liabilities listed above apply as well to Madera with the following exceptions:

Income taxes currently payable (including amounts due under applicable tax sharing agreements) and deferred income tax liabilities and assets (net) are assumed liabilities. To the extent that accrued state income taxes payable or receivable do not represent amounts due taxing authorities in jurisdictions where Madera has a separate filing obligation, they are treated as intercompany obligations under applicable tax sharing agreements.

Accrued property taxes of Madera are not subject to proration.

Attachment C

2008 Annual Report

2008 10-K

Attachment B

Synopsis of 2004-8 Federal Income Tax documents

Attachment D

1987 – 1997 Commercial and General Liability Policy –
Declarations pages